IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.751 OF 2002.

IN

SUMMARY SUIT NO. 950 OF 2002.

Shri Kishorilal Ramsunder Kahar .. Plaintiff

versus

Shri Jehangir Ahmed Shaikh .. Defendant

...

Mr.Ashok Mishra i/b Pandey & Co for Plaintiff.

Mr. Nitin H. Shukla for Defendant.

CORAM : D.G. KARNIK, J

DATED :10th January 2005.

P.C:-

1. Heard learned counsel for the parties. The plaintiff has filed a suit for recovery of a loan of Rs.1,59,620/- allegedly given in cash to the defendant and interest thereon. The plaintiff relies upon a document Exhibit A as a proof for advancing the loan.

The defendant by filing an affidavit in reply has denied having taken the loan. In paragraph no. 4 of the affidavit in reply he has stated that the signature is forged and Exhibit A does not bear his signature. No affidavit in rejoinder has been filed denying this averment. The defendant has further contended that it is unlikely that a loan of an odd amount of Rs.1,59,620/- in cash would be taken. He pleads that there were some other transactions in auto ware goods. In view of the fact that the defendant has denied the entire transaction and also denied his signature on Exhibit A, the plaintiff would be required to prove the transaction and the signature. It is worthwhile to know that a large amount is stated to have been advanced in cash without there being any other proof. The plaintiff has not produced an entry in the books of account regarding the alleged loan. In the circumstances, the defence raised by the defendant cannot be said to be frivolous and malicious. It would require trial. Furthermore interest has been claimed in the plaint. The alleged agreement (Exhibit A) itself shows that the loan was advanced without any interest. The plaintiff has claimed interest and therefore the suit is primafacie not triable as a summary suit qua the claim for

interest. In the circumstances, the defendant is granted unconditional leave to defend the suit. The defendant to file the written statement within a period of four weeks. Suit shall stand transferred to the list of commercial causes.

D.G.KARNIK, J